

April 23, 2007



Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth Street, SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in WT Docket No. 06-150
 PS docket No. 06-229

Dear Ms. Dortch:

On April 23, 2007, Andrew Jay Schwartzman and Harold Feld of Media Access Project, Dr. Gregory Rose of Economic Research Services, Gigi Sohn of Public Knowledge, Michael Calabrese of New America Foundation, and Ben Scott of Free Press, met with Chairman Martin, Erika Olsen, and Fred Campbell with regard to the above captioned matter.

The parties discussed two studies prepared by Dr. Gregory Rose (copies attached). As demonstrated by the studies, the open auction structure permitted incumbents to engage in retaliatory bidding, thus suppressing the price paid for licenses and significantly reducing the revenue obtained. In addition, incumbents clearly and demonstrably engaged in blocking strategies to deny a national footprint to DBS Wireless, the Dolan Family, and other potentially disruptive new entrants. Further, while merely circumstantial, the consistent pattern of blocking with regard to licenses sought by DBS wireless suggests that actual collusion, not merely tacit collusion, may have taken place.

In addition, although by no means conclusive, the unusually high number of bidders that either did not bid, bid only once (and won no licenses), or bid only twice (and won no licenses), strongly suggests that they were encouraged to enter the auction solely for the purpose meeting the initial eligibility threshold. Had the 11 bidders that did not bid or only bid once not been included, the modified eligibility ratio would have fallen to 2.89 and anonymous bidding would have been used. Dr. Rose expressed his opinion that it would, as a practical matter, be impossible to set a modified eligibility ratio that could eliminate the signaling problem and, in any event, only anonymous bidding could eliminate the problem of deliberate blocking.

Dr. Rose also acknowledged that larger licenses or higher reserve prices might mitigate the signaling problem. But use of larger licenses creates a preclusive effect for smaller entities winning licenses, and it is unclear whether the trade off would

sufficiently mitigate the problem of signaling. With regard to reserve price, the FCC has a history of lowering the reserve price during auctions when incumbents have refused to meet the reserve price. Accordingly, it is unlikely that incumbents will regard a need to meet reserve price limits seriously. Further, as with the modified eligibility ratio, this does not address deliberate blocking.

The parties also discussed the proposal for 30 MHz of spectrum operating under an "open access" condition. The parties stressed that the 30 MHz need not be located in the upper band, or as 2 15 MHz blocks, or even as three 10 MHz blocks. Although engineers consulted by PISC agree that blocks of 10-11 MHz in size are most useful for broadband services, cognitive radios that allow users to aggregate disparate blocks of spectrum can compensate for "odd" block sizes *provided sufficient spectrum is available* to make the deployment of such technologies economically feasible. In this regard, PISC reasserted the need to make 30 MHz of spectrum reliably available to facilitate the emergence of an independent "third pipe" to the home.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206, this letter is being filed with your office.

Respectfully Submitted,

Harold Feld
Senior Vice President

cc:
Chairman Martin
Fred Campbell
Erika Olsen